

No. 6 / 15 /DPNP

Jakarta, March 31 2004

CIRCULAR LETTER

To

ALL COMMERCIAL BANKS
IN INDONESIA

Subject : Fit and Proper Test

In regard to Bank Indonesia Regulation Number 5/25/PBI/2003 dated November 10, 2003 concerning the Fit and Proper Test (State Gazette of the Republic of Indonesia of 2003 Number 124, Supplement to the State Gazette Number 4334), it is deemed necessary to formulate provisions for the application of the aforementioned Bank Indonesia Regulation as follows:

I. GENERAL PROVISION

1. As regulated by Bank Indonesia Regulation, the fit and proper test shall be conducted by Bank Indonesia for:
 - a. Prospective Controlling Share-Holders and candidate managers of a bank (including new entry bank); and,
 - b. Controlling Shareholders that have been approved by Bank Indonesia, the existing Managers and Executive Officers of a bank.
2. The fit and proper test for prospective CONTROLLING SHAREHOLDERS and candidate Manager of a Bank, including the candidate Head of Representative Officer of Foreign Bank, shall be

conducted in order to ascertain whether the candidate meets the determined requirements which shall be conducted through administrative due diligence and interview.

3. The fit and proper test for Controlling Shareholders that has been approved by Bank Indonesia, and for the managers and existing executive officers of Banks shall be conducted at any time. Particularly if irregularities in departure from sound banking norms come to light from the result of supervision, examination or from other sources of information.
4. The fit and proper test shall not be conducted for candidate Executive Officers of Banks. Whereas the fit and proper test for existing Executive Officers of Banks and the Head Representative Officers of Foreign Banks shall only be conducted in the case of an indication that the concerning party is acting in concert to exercise:
 - a. Policy formulation and operational activity that negatively has affected the business activities of banks; and or,
 - b. Violation or deviation in the operational activities of Banks or Representative Office of Foreign Banks.

II. FIT AND PROPER TEST FOR PROSPECTIVE CONTROLLING SHAREHOLDERS AND CANDIDATE MANAGERS OF BANKS.

A. Test Factors

1. As regulated in Article 4 and Article 15 of Bank Indonesia Regulation, the tested factors includes:
 - a. Factors of integrity and financial standing of prospective Controlling Shareholders; and
 - b. Factors of integrity, competency, and financial reputation of candidate Managers.

2. The parties that are obliged to take the fit and proper test are as follows:
 - a. A party or Legal Entity that is purchasing, receiving a bequest or an inheritance in a form of Bank stock which resulted in positioning the party as Controlling Shareholders.
 - b. Shareholder that is not included as Controlling Shareholders (Non-Controlling Shareholders) that purchases stocks, or receives a bequest of bank stock or receives an inheritance of Bank stock which resulted in positioning the referred party as Controlling Shareholders.
 - c. Non-Controlling Shareholders that perform capital accumulation or depositing which resulted in positioning the referred party as Controlling Shareholders;
 - d. Non-Controlling Shareholders that voluntarily nominate themselves to be Controlling Shareholders;
 - e. A party or legal entity that may be classified as Bank controller because of a restructuring of the bank business group as referred to in Article 53 of the aforementioned Bank Regulation;
 - f. A party that is now appointed as a Bank Manager; who previously has never been a Bank Manager;
 - g. A party that has been or is now the existing Bank Manager, who is nominated to be a Manager in a different Bank;
 - h. A Bank Commissioner who procures a new position as a Compliance Director at the same Bank;
 - i. A Director who procures a new position as a Compliance Director at the same Bank;
 - j. A party who is nominated to be a Head of Representative Office of Foreign Banks;
 - k. A member of the Directors or the Board of Commissioners who

procures a higher position at the same Bank (only by administrative due diligence);

1. A Director who procures a new position as a Commissioner at the same Bank (only by administrative due diligence);

B. Administrative Requirements for Prospective Controlling Shareholders

1. Bank application for the approval of prospective Controlling Shareholders shall be submitted to Bank Indonesia complete with the administrative requirements as regulated in the aforementioned Bank Indonesia Regulation and other provisions that regulate the requirements for Bank share holders, as follows:
 - a. Decree of the Directorate of Bank Indonesia Number 32/37/KEP/DIR dated May 12, 1999 concerning The Requirements and Conduct of Opening Branch Office, Sub-Branch Office, and Representative Offices of Overseas Operating Bank;
 - b. Decree of the Directorate of bank Indonesia Number 32/50/KEP/DIR dated May 14, 1999 concerning the Requirements and Conducts of Procuring Commercial Bank Stock;
 - c. Decree of the Directorate of Bank Indonesia Number 32/51/KEP/DIR dated May 14, 1999 concerning the Requirements and Conducts for Merger, Consolidation and Acquisition of Commercial Banks;
 - d. Bank Indonesia Regulation Number 2/27/PBI/2000 dated December 15, 2000 concerning Commercial Banks; and,
 - e. Bank Indonesia Regulation Number 4/1/PBI/2002 dated March 27, 2002 concerning the Change of Business from Conventional Commercial Bank to Commercial Bank Based on Syariah Principles and Opening of Bank Office Based on Syariah Principles by Conventional Commercial Banks.

The detailed documents for administrative requirements are as referred to in the Supplement 1a and 1b.

2. The requirements for the last 3 (three) years of Bank financial report and the legal entity that shall perform the acquisition of a Bank as stated in Supplement 1a number 3 letter c, at least consists of balance report and profit/cost calculation including the explanation which have been audited by a Public Accountant. The financial report shall be arranged according to the existing Financial Accountant Standard.
3. Other than the concerning documents, the Bank must also submit a Form as referred to in Supplement 1c and 1d. The form shall be completed and signed by the prospective Controlling Shareholders/Ultimate Shareholders.

C. Administrative Requirements for Candidate Manager

Bank request to obtain approval for candidate manager shall be submitted to Bank Indonesia with the completion of administrative requirements as regulated in the aforementioned Bank Indonesia Regulation and other provisions that regulated the requirements of Bank manager, as follows:

1. Decree of Directorate of Bank Indonesia Number 32/37/KEP/DIR dated May 12, 1999 concerning the Requirements and Conducts of Opening Branch Office, Subsidiaries, and Representative Office of Overseas Operating Banks;
2. Bank Indonesia Regulation Number 16/PBI/1999 dated September 20, 1999 concerning the Assignment of Compliance Director and Implementation of Standard for Performing Internal Audit Functions of Commercial Banks;
3. Bank Indonesia Regulation Number 2/27/PBI/2000 dated December 15 concerning Commercial Banks; and

4. Bank Indonesia Regulation Number 4/PBI/2002 dated March 27, 2002 concerning the Change of Business Activity of Conventional Commercial Banks to Commercial Bank Based on Syariah Principles and Opening of Bank Office Based on Syariah Principles by Conventional Commercial Banks.

The detailed document for administrative requirements as referred to in Supplement 2a to 2f.

D. Supporting Documents of Administrative Requirement

Whenever is required, Bank Indonesia may ask for supporting document of the required administrative document. The documents are inseparable part of the required administrative documents.

Supporting documents that can be required is consortium agreement of a stock purchasing if the stock is purchased by the party jointly with another party. Also legal documents indicating relationship between the controlling shareholders and the ultimate shareholders. And financial document indicating the flow of fund for stock purchasing, and or other documents used for analysis or in support of the primary documents or reliable and proven statements given to Bank Indonesia.

E. Procedures of Test

1. As regulated in Article 8 and Article 20 of the aforementioned Bank Indonesia Regulation, the fit and proper test for controlling shareholders and candidate Managers of a Bank shall be conducted through administrative due diligence and interview.
2. Administrative due diligence en compasses:
 - a. For prospective a Controlling Shareholder

A test concerning the completion and veracity of administrative

documents, test of track record and test of financial reputation.

b. For a Candidate Manager

A test concerning the completion and veracity of administrative documents, test of track record and test of financial reputation.

3. Application document shall be declared as accepted completely, if the administrative document and the supporting document (if necessary) has been completely received by Bank Indonesia.
4. Interview shall be conducted to confirm the obtained information or to search for more information from the proposed prospective Controlling Shareholders and candidate Managers. This is done in order to gain trust and information completion given by the Bank or that has been obtained by bank Indonesia. The interview shall only be conducted for the prospective Controlling Shareholders and candidate Managers that have met the requirements in the administrative due diligence.
5. The result of fit and proper test in the form of approval or rejection of the application from the prospective Controlling Shareholders or candidate Manager shall be delivered in written m to the Bank. If considered necessary, the result of the test shall be delivered to other concerning parties, such as the Government and the Stockholders.
6. The fit and proper test procedures applied for prospective Controlling Shareholders shall not be used for prolongation of manager of bank position. Including in the prolongation positions is each reassignment for the same level of position, before or after the length of service ends. Prolongation of Management position must be reported to Bank Indonesia, according to the conducts for report as regulated in Number III letter E.

F. The Address for Letter of Application and Administrative Documents

The application letter accompanied by the documents as referred to in the aforementioned letter B, C, and D shall be delivered by the Bank to:

The Directorate of Legal Permission and Banking Information,
Bank Indonesia
Jl. M. H. Thamrin No. 2 Jakarta 10110;

With carbon copy delivered to:

- a. The Directorate of Inspection of concerning Bank, Bank Indonesia, Jl. M.H. Thamrin No. 2 Jakarta 10110, for Commercial Bank whose Head Office is within Jabotabek area; or
- b. Local Bank Indonesia, for Bank whose Head Office is outside Jabotabek area.

III. FIT AND PROPER TEST FOR CONTROLLING SHAREHOLDER(S), MANAGERS AND EXECUTIVE OFFICERS OF BANK

A. Code of Conduct for Test

1. As regulated in the aforementioned Article 27 of Bank Indonesia Regulation, fit and proper test for Controlling Shareholders that has been approved by Bank Indonesia and test for existing Managers or Executive Officers of Bank shall be done at any time. Especially if irregularities in departure from sound banking norms come to light from the results of banking supervision, examination and or other sources of information.
2. The implementation of fit and proper test shall be conducted through special examinations or concurrently with other examinations.

B. Code of Conduct to Determine the Result of Test

The determination of the fit and proper test result shall be conducted by giving factor score for each evaluated factor such as:

1. For Controlling Shareholders, factor scores for each evaluated factor are as follows:

a. Factors of Integrity

- 1) committing act of fraud or banking practices in deviation from stipulations in banking shall be given a factor score of 20 (twenty);
- 2) committing act of refusal to provide commitment or failure to honor commitment made with Bank Indonesia and or the Government shall be given a factor score of 20 (twenty);
- 3) committing act that undue profit gain for the owner, manager, employee, and or other party that may incur loss or reduce the profit of the Bank shall be given a factor score of 15 (fifteen);
- 4) committing acts in violation of prudential banking principles shall be given a factor score of 10 (ten).

b. Factors of Financial Standing

- 1) Being on the list of bad debt shall be given a factor score of 5 (five);
- 2) Declared bankrupt or declared at fault in the bankruptcy of a company shall be given a factor score of 20 (twenty);
- 3) Inability to provide commitment in resolving capital and liquidity difficulties if the Bank shall be given a factor score of 10 (ten).

2. The factor scores for each evaluated factor for the Manager and or Executive Officers are as follows:

a. Factors of Integrity

- 1) committing act of fraud or banking practices in deviation from stipulations in banking shall be given a factor score of 20 (twenty);
- 2) committing act of refusal to provide commitment or failure to honor commitment made with Bank Indonesia and or the Government shall be given a factor score of 20 (twenty);
- 3) committing act that undue profit gain for the owner, manager, employee, and or other party that may incur loss or reduce the profit of the Bank shall be given a factor score of 15 (fifteen);
- 4) committing acts in violation of prudential banking principles shall be given a factor score of 10 (ten).
- 5) dependent acts of Managers and or Executive Officers shall be given a factor score of 5 (five).

b. Factors of Competency

- 1) sufficient knowledge of banking relevant to the position shall be given a score factor for a maximum of 4 (four);
- 2) expertise and experience in banking and or finance shall be given a score factor for a maximum of 4 (four);
- 3) Capacity for strategic management within the framework of developing a sound Bank shall be given a factor score for a maximum of 4 (four).

The evaluation of competency factors shall be based on the scale of scores as follows:

- a) Good with score factor of 0
- b) Less than Good with a score factor of 2
- c) Bad with a score factor of 4

c. Factors of Financial Reputation

- 1) on the list of bad debts shall be given a score factor of 5 (five);
- 2) declared bankrupt of declared at fault in the bankruptcy of a company shall be given a factor score of 20 (twenty);

3. In the evaluation of integrity factors as referred to on number 1 letter a and number 2 letter a, the scores are as follows:

- a. the executor, the decision maker, the planner, or the responsible party shall be given a score of 100% (a hundred percent);
- b. the executor, parties that sign in, or other approving party shall be given a score of 60% (sixty percent);
- c. a party that has knowledge of the concerning act shall be given a score of 25% (twenty five percent).

The decision of the final result for integrity factors shall be executed after deliberating the factor scores with the aforementioned amount as referred to in number 1 letter a or number 2 letter a.

4. The final result of the fit and proper test shall be decided by adding up the test scores:

- a. factors of integrity and factors of financial standing for the Controlling Shareholders;
- b. factor of integrity, factors of competency and factors of financial reputation for Managers and Executive Officers.

C. The Code of Conducts for Determining the Ratings for Test Results

Based on the final test results as referred to in Letter B number 4, the ratings for Controlling Shareholders, Managers and or Executive Officers are as follows:

- a. Passing Grade, if the final test result is 0 (zero);
- b. Qualified Passing Grade, if the final test result is more than 0 (zero) but

less than 20 (twenty);

- c. Disqualified, if the final test result is or more than 20 (twenty).

D. The Criteria for Determining the Material Factors in the Establishment of Sanction Time

1. As stipulated in the aforementioned Article 42 verse (1) Bank Indonesia Regulation, one of the factors to establish the sanction time for disqualified parties shall be based on material factors as a result of loss of Bank capital. This is the result of the deeds and acts of the concerning party. Therefore, criteria should be created for the referred material factors, are as follows”
 - a. Deeds and or action of the concerning party that may be categorized as incurring loss that materially not impacting the Bank capital if the incurred loss causes:
 - 1) decrease of the ratio of the Obligation of Minimum Capital Provision that is less than 0,5% (a half percent); and
 - 2) Ratio of the Obligation of Minimum Capital Provision is in accordance to the existing stipulations.
 - b. A deed or action of the concerning party that may be categorized as incurring loss that materially impacting the capital of the Bank if the resulted loss causes:
 - 1) decrease of the ratio of the Obligation of Minimum Capital Provision that is between 0,5% (a half percent) and 2% (two percent); and
 - 2) the ratio of the Obligation of Minimum Capital Provision is in accordance to the existing stipulations.
 - c. A deed or action of the concerning party that may be categorized as incurring loss very materially impacting the capital of the Bank if the resulted loss causes:
 - 1) decrease of the ratio of the Obligation of Minimum Capital

Provision with the amount of or more than 2% (two percent);
and

- 2) the ratio of the Obligation of Minimum Capital Provision is lower than the existing stipulations.
2. Bank capital that shall be used as a base for calculating the level of resulted material loss is the last condition of capital in time of the action of the concerning party with consideration to the integrity of the evaluated parties.
3. The code of conduct for calculating the material level:
 - a. The decision for the loss for each deed and action shall be established in regards to the integrity of the party based on the score of evaluation as referred to in letter B number 3.
 - b. The resulted loss for each party in letter a shall be evaluated based on the capital in time of the referred deed or action.
 - c. Whereas deed and or action evaluated based on a capital in a different month, the evaluation shall be conducted by determining the total sum that may cause the longest effect of prohibition term by applying one of these methods:
 - 1) the impact of the loss on Bank capital caused by each deed and or action compared to the capital position during the time of executing the deed and or action;
 - 2) the impact of loss on the Bank capital that is cumulatively calculated based on several deeds and or actions that end on particular dates compared to the last period capital position of the concerning several deeds and or actions;
 - 3) the impact of loss on the Bank capital that is cumulatively calculated based on all deeds and or actions compared to the last period capital position of the concerning all deeds and or actions;

E. The Address for Submitting Report, Written Statement and Application for Reinstatement

Report, written statement and or application for reinstatement as referred to in Chapter II letter D number 6 of this Circular Letter, and Chapter IV and Chapter V of the aforementioned Bank Indonesia Regulation, shall be submitted by Bank or the evaluated parties to:

- a. The Directorate of Inspection of the concerning Bank, Bank Indonesia, Jl. M.H. Thamrin No. 2 Jakarta 10110, for Commercial Bank whose Head Office is within Jabotabek area; or
- b. Local Bank Indonesia, for Bank whose Head Office is outside Jabotabek area.

With a carbon copy to The Directorate of Legal Permission and Banking Information, Bank Indonesia Jl. M. H. Thamrin No. 2 Jakarta 10110;

IV. THE REPORT ON BUSINESS GROUP STRUCTURE

The report on business group structure as referred to in Article 53 of the aforementioned Bank Indonesia Regulation encompasses all parties related to Bank from the controlling aspect to the ultimate shareholders.

In the case that the control is caused by the aspect of ownership, it is deemed necessary to include the share of ownership and the organizational structure of each related party. The example of the report of business group structure is as referred to on Supplement 3a and 3b. The of the report of business group structure shall be submitted to Bank Indonesia with the address as in number III letter E.

V. CONCLUDING PROVISION

With the promulgation of this Circular Letter, the Circular Letter of Bank Indonesia Number 2/22/DPNP dated November 6, 2000 concerning the Fit and Proper Test is revoked and no longer valid.

The provisions in this Circular Letter shall come into force on March 31, 2004.

For the public to be informed, it is ordered that this Circular Letter be promulgated in the State Gazette of the Republic of Indonesia.

Kindly be informed.

BANK INDONESIA,

(signed)

NELSON TAMPUBOLON

DIRECTOR OF BANKING

RESEARCH AND STRUCTURING